



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR 19 2013

BY E-MAIL & U.S. MAIL

David Siegel, Esq.
Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067-4276
E-mail: dsiegel@irell.com

David R. Belding, Esq.
395 E. Sunset Blvd
Las Vegas, NV 89119
E-Mail: dbelding@ix.netcom.com

RE: MUR 6718
(formerly Pre-MUR 520)

Dear Mr. Siegel and Mr. Belding:

On April 18, 2013, the Federal Election Commission accepted the signed conciliation agreement submitted to resolve allegations, about which the Commission previously found reason to believe, that Michael and Sharon Ensign violated a provision of the Federal Election Campaign Act, 2 U.S.C. § 441a(a)(1), by making excessive contributions to Senator John E. Ensign, Ensign for Senate, and Battle Born PAC. I have enclosed a copy of the fully executed conciliation agreement for your files. Please note that, as specified in the agreement, the \$22,000 civil penalty is due within 30 days of the agreement's effective date.

The file in this matter is now closed. Therefore, documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003); Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Commission will not make public, however, information derived in connection with any conciliation attempt without the written consent of the respondent and the Commission. 2 U.S.C. § 437g(a)(4)(B).

13044332554

David Siegel, Esq.
David Belding, Esq.
MUR 6718 (formerly Pre-MUR 520)
Page 2

If you have any questions, please contact me at (202) 694-1597.

Sincerely,

A handwritten signature in black ink, appearing to read "LEEVANS", written in a cursive, stylized script.

Leonard O. Evans III
Attorney, Enforcement Division

Enclosure
Conciliation Agreement

13044332555

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:

Michael Ensign and Sharon Ensign,

Respondents.

MUR 6718

(formerly Pre-MUR 520)

OFFICE OF
COUNSEL

2013 APR 10 AM 12:14

RECEIVED
FEDERAL ELECTION
COMMISSION

CONCILIATION AGREEMENT

In the course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") received information that resulted in the initiation of this matter. See 2 U.S.C. § 437g(a)(1). The Commission opened a Matter Under Review and found reason to believe that Michael Ensign and Sharon Ensign (collectively the "Respondents") made excessive in-kind contributions to John E. Ensign, Ensign for Senate and Lisa Lisker in her official capacity as treasurer (the "Committee"), and Battle Born Political Action Committee and Lisa Lisker in her official capacity as treasurer (the "PAC") in violation of 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(1)(C).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation before a finding that there is probable cause to believe a violation has occurred, and having agreed to settle, compromise, and resolve this matter pursuant to Federal Rule of Evidence 408 and without the expense of further proceedings, hereby enter into this Conciliation Agreement (the "Agreement"), which provides as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this Agreement has the effect of an agreement entered under 2 U.S.C. § 437g(a)(4)(A)(i).

13044332556

II. The Respondents have had a reasonable opportunity to demonstrate that the Commission should take no action in this matter.

III. The Respondents, through their undersigned representatives, who represent that they have the authority to enter into this Agreement on behalf of the Respondents, voluntarily enter into this Agreement with the Commission.

IV. For purposes of settling this matter, the parties agree that the pertinent facts are as follows:

1. John E. Ensign represented Nevada as a United States Senator from January 3, 2001, to May 3, 2011. He filed statements of candidacy to run for that office for the 1998, 2000, 2006, and 2012 elections.

2. The Committee is Senator Ensign's principal campaign committee and therefore is a political committee within the meaning of 2 U.S.C. § 431(4). The Committee is registered with the Commission and Lisa Lisker is its current treasurer of record.

3. The PAC is Senator Ensign's leadership political action committee and therefore is a political committee within the meaning of 2 U.S.C. § 431(4). The PAC is registered with the Commission and Lisa Lisker is its current treasurer of record.

4. Michael and Sharon Ensign are Senator Ensign's parents. They control a trust account known as the Ensign 1993 Trust.

5. Cynthia Hampton was the Committee's Treasurer beginning after the 2006 election and the PAC's Treasurer beginning in February 2008. She left these Treasurer

13044332557

positions in April 2008. Lisa Lisker later replaced Hampton as Treasurer for both committees.

6. Douglas Hampton was Cynthia Hampton's husband. He served as Senator Ensign's Administrative Assistant and Co-Chief of Staff from November 2006 to April 2008.

7. In or around December 2007, Senator Ensign and Cynthia Hampton began an extra-marital affair, which continued through August 2008. The Ensign and Hampton families, including the Respondents, learned of the affair sometime before April 1, 2008. The affair later became public on June 16, 2009. After the Ensign and Hampton families learned about the affair, Senator Ensign and the Hamptons decided that Cynthia and Doug Hampton would have to leave their jobs working for Senator Ensign. The Commission concluded that Senator Ensign and Doug Hampton then negotiated an arrangement to end the employment relationships; their arrangement contemplated, among other things, that the Hamptons would receive a payment of \$96,000; and of that amount, \$72,000 covered Cynthia Hampton's lost salary and health benefits resulting from the termination of her employment with the Committee and the PAC. The Respondents did not participate in and contend that they were not privy to those negotiations.

8. Between April 2, 2008, and June 16, 2009, Senator Ensign referred to this \$96,000 payment as a severance or as related to the Hamptons' lost employment in an entry in his personal journal, in internal drafts of a June 16, 2009 public statement, and in discussions with members of his Senate staff and others, including the Hamptons.

13044332558

9. Between April 2 and 7, 2008, Senator Ensign and Michael Ensign discussed a payment to the Hamptons to help them financially, given the loss of their jobs with his Senate office, the Committee, and the PAC. According to Senator Ensign's journal, Senator Ensign told Michael Ensign that he intended to pay the Hamptons to help them financially transition to their new life after the loss of their jobs with his Senate office, the Committee, and the PAC.

10. Thereafter, on April 7, 2008, Michael Ensign caused a check to be issued from the Ensign 1993 Trust account and to be made payable to Dong and Cynthia Hampton and two of their three children. The amount of this check was \$96,000, which was the same amount Senator Ensign had negotiated with the Hamptons.

11. The Respondents knew of the Hamptons' job losses and were particularly concerned about the impact on the Hamptons' children. The Respondents contend, however, that they believed in good faith that the payment was a gift to the Hamptons, rather than an in-kind contribution to Senator Ensign, the Committee, and the PAC. The Respondents further contend that, among other things, Michael Ensign originally wanted to give the Hamptons \$160,000 but Respondents decided to give \$96,000, as they understood this to be the maximum amount they could give without gift tax consequences. And the Respondents also contend that the Hampton family had a close relationship with Senator Ensign's family, and those two families had shared holidays and weekends together for years.

13044332559

12. On April 9, 2008, the \$96,000 check described in paragraph IV.10. was deposited into the Hamptons' bank account, and on or about that same date, Cynthia Hampton informed Senator Ensign that she received the payment.

V. Solely for the purpose of settling this matter expeditiously and to avoid the expense of litigation, without admitting liability in this matter or with respect to any other proceeding, the Respondents agree not to contest in this matter the Commission's conclusion that the Respondents violated the Act as follows:

1. Under the Federal Election Campaign Act (the "Act"), a "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office." *Id.* § 431(8)(A)(i). Similarly, the Act defines an "expenditure" to include any direct or indirect payment, distribution, loan, advance deposit, or gift of money, or any services, or anything of value, made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(9)(A)(i). And "[e]xpenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate . . . shall be considered to be a contribution to such candidate." *Id.* § 441a(a)(7)(B)(i).

2. Contributions given or expenditures made to pay a committee's administrative support costs, such as employee salaries and related costs, are subject to the Act's contribution limits. *See Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 198 n.19 (1981) (plurality opinion). Accordingly, under the Act, the portion of the payment calculated to compensate Cynthia Hampton for her lost salary (\$50,000) and health benefits

13044332560

(\$22,000)—specifically, \$72,000—was an in-kind contribution made by the Respondents to the Committee and PAC.

3. The Act provides that no person shall make a contribution to any candidate or his or her authorized political committee with respect to any election for federal office that exceeds \$2,300 for the 2008 election cycle. 2 U.S.C. § 441a(a)(1)(A). Likewise, the Act prohibits any person from contributing more than \$5,000 per year to a leadership PAC. *Id.* § 441a(a)(1)(C).

4. The \$72,000 attributable to Cynthia Hampton's severance exceeds four of the Act's contribution limits—Michael and Sharon Ensign's per-person limits for each of the two Ensign Committees—as shown in the following chart:

	Contribution to Senator Ensign and Ensign for Senate	Contribution to Battle Born PAC	Total
	\$2,300 per-person limit	\$5,000 per-person limit	
Michael Ensign	\$18,000	\$18,000	\$36,000
	\$15,700 over limit	\$13,000 over limit	
Sharon Ensign	\$18,000	\$18,000	\$36,000
	\$15,700 over limit	\$13,000 over limit	
		Total	\$72,000

5. Therefore:

- a. Michael Ensign made an excessive in-kind contribution to the Committee totaling \$15,700, in violation of 2 U.S.C. § 441a(a)(1)(A).
- b. Sharon Ensign made an excessive in-kind contribution to the Committee totaling \$15,700, in violation of 2 U.S.C. § 441a(a)(1)(A).
- c. Michael Ensign made an excessive in-kind contribution to the Committee totaling \$13,000, in violation of 2 U.S.C. § 441a(a)(1)(C).

13044332561

d. Sharon Ensign made an excessive in-kind contribution to the Committee totaling \$13,000, in violation of 2 U.S.C. § 441a(a)(1)(C).

VI. Without admitting liability, the Respondents will do the following to fully resolve and settle this matter:

1. Pay to the Commission a civil penalty in the amount of Twenty-Two Thousand Dollars (\$22,000), under 2 U.S.C. § 437g(a)(5); and
2. Cease and desist from any violations of 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(1)(C).

VII. Within no more than thirty days from the effective date of this Agreement, the Respondents will do the following:

1. Fully implement and comply with the requirements of this Agreement; and
2. Notify the Commission in writing that they have fully implemented, are complying with, and will continue to comply with the requirements of the Agreement.

VIII. This Agreement is effective as of the date that all parties have executed it and the Commission has given its final approval.

IX. At the request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue in this case, or on its own motion, the Commission may review compliance with this Agreement. If the Commission finds that one or more of the Respondents have violated any requirement set forth in this Agreement, it may institute a civil action for relief in the United States District Court for the District of Columbia.

13044332562

X. This Agreement constitutes the entire agreement between the parties concerning this matter. No other statement, promise, or agreement, whether oral or written, made by either party or by agents of either party will be enforceable as part of this Agreement.

XI. This Agreement may be executed in counterparts, each of which constitutes an original and all of which collectively constitute one and the same Agreement.

FOR THE COMMISSION:

Anthony Herman
General Counsel

Dated: 4/18/13

BY:


Daniel A. Petalas
Associate General Counsel for Enforcement

Peter Blumberg
Assistant General Counsel

Leonard O. Evans III
Attorney, Enforcement Division

FOR MICHAEL ENSIGN:

Dated: 4-5-2013

BY:


David Siegel
Attorney for Michael Ensign

FOR SHARON ENSIGN:

Dated: 4-5-2013

BY:


David R. Belding
Attorney for Sharon Ensign

13044332563